

## **Imperial Irrigation District Water Conservation Financing.**

IID applied to the California Infrastructure and Economic Development Bank (I-Bank) for a loan guarantee relating to financial risks associated with execution of the water transfer agreement with San Diego County Water Authority, to address these financial risks and to enable IID to issue sufficient revenue bonds to finance measures associated with the project. The I-Bank board of directors approved a preliminary loan guarantee (see following pages) on June 27, 2003. The preliminary loan guarantee was effectuated with the October 2003 execution of the QSA.

If you have questions about the status of this financing, please contact:

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## **RESOLUTION NO. 03-18**

### **RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK APPROVING A PRELIMINARY LOAN GUARANTEE COMMITMENT FOR THE IMPERIAL IRRIGATION DISTRICT**

**WHEREAS**, the Imperial Irrigation District ("IID") and the San Diego County Water Authority ("SDCWA"), entered into a 45-year water conservation and transfer agreement ("Transfer Agreement") for the transfer of up to 200,000 acre-feet per year of water supply to SDCWA based upon IID water conservation, and subsequently, IID, SDCWA, the Metropolitan Water District of Southern California and the Coachella Valley Water District negotiated terms of a Quantification Settlement Agreement ("QSA") which describes a series of agreements regarding, *inter alia*, settlement of disputes among the parties arising from the Transfer Agreement ("QSA Agreements" and together with the Transfer Agreement, the "Agreements"); and

**WHEREAS**, the IID requires a loan guarantee in order to insure that they can issue revenue bonds required to finance a water supply project consisting of water conservation measures ("Project") needed to implement the Agreements and ensure that California continues to receive the maximum amount of water from the Colorado River; and

**WHEREAS**, pursuant to Resolution 03-16, adopted May 28, 2003 the CIEDB Board adopted criteria, priorities and guidelines ("Criteria") for a potential loan guarantee for the IID and committed \$20 million from the California Infrastructure and Economic Development Bank Fund to the California Infrastructure Guarantee Trust Fund ("Guarantee Trust Fund"), which is established pursuant to Government Code section 63060; and

**WHEREAS**, on May 13, 2003 the IID submitted to CIEDB a Preliminary Loan Guarantee Application ("Application") requesting a preliminary loan guarantee, attached hereto as Exhibit A; and

**WHEREAS**, Staff has determined that the Applicant-proposed preliminary loan guarantee and Project meet threshold eligibility requirements contained in Government Code Section 63000 *et seq.* ("Act") and the Criteria;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the California Infrastructure and Economic Development Banks, as follows:

**Section 1.** The Board hereby finds that the Application is consistent with the Criteria and the Act.

**Section 2.** The Board hereby approves a preliminary loan guarantee on the terms requested in the Application.

**Section 3.** This resolution, in combination with the Application, shall constitute the Preliminary Loan Guarantee Commitment.

**Section 4.** The Executive Director is hereby authorized to transfer all funds in the Guarantee Trust Fund to a sub-account hereby established thereunder entitled the Imperial Irrigation District Infrastructure Guarantee Trust Account ("IID Guarantee Trust Account"). As long as either the Preliminary Loan Guarantee Commitment or a loan guarantee consistent with the Preliminary Loan Guarantee Commitment is in effect, funds in the IID Guarantee Trust Account shall be unconditionally pledged as described in those documents. Interest earnings on the IID Guarantee Trust Account shall remain within the IID Guarantee Trust Account, subject to the above-described pledge.

**Section 5.** This Preliminary Loan Guarantee Commitment shall expire on December 31, 2003 if the Agreements are not executed by that date. Upon execution of the Agreements, the Preliminary Loan Guarantee Commitment shall expire on December 31, 2009, unless extended in writing by the Board.

**Section 6.** This resolution shall take effect from and after its adoption.

**PASSED, APPROVED, AND ADOPTED** at a meeting of the Board of Directors of the California Infrastructure and Economic Development Bank on June 27, 2003, by unanimous consent.

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Stanton C. Hazelroth, Executive Director

Attest:

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Blake Fowler, Secretary

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK**  
**Draft Criteria, Priorities and Guidelines**  
**Proposed Imperial Irrigation District Loan Guarantee**

**A. BACKGROUND**

On April 29, 1998, the Imperial Irrigation District ("IID") and the San Diego County Water Authority ("SDCWA") entered into a 45-year water conservation and transfer agreement ("Transfer Agreement") for the transfer of up to 200,000 acre-feet per year of water supply to SDCWA based upon IID water conservation. The Metropolitan Water District of Southern California ("MWD") and the Coachella Valley Water District ("CVWD") challenged the IID/SDCWA transfer, resulting in Key Terms of a Quantification Settlement Agreement ("QSA"), which outlined a series of agreements to settle disputes and allow the Transfer Agreement to proceed ("QSA Agreements" and together with the Transfer Agreement, the "Agreements").

The parties to the QSA are historical users of Colorado River water; a resource relied upon by several states. California's use of Colorado River water will in the future be limited to a 4.4 million acre-foot annual apportionment, or up to 800,000 acre-feet less than California's historical use. In January 2001, the Secretary of Interior adopted Interim Surplus Guidelines ("Guidelines") that would make available additional surplus Colorado River water to California for a period of 15 years to provide a "soft-landing" for California to reduce its long-term use of Colorado River water to its basic 4.4 million acre-foot apportionment. Under the terms of the Guidelines, the surplus water is only available if the QSA Agreements were executed by December 31, 2002. This did not occur and the Secretary of the Interior suspended the special surplus criteria of the Guidelines. As a result, California could lose more than 620,000 acre-feet of Colorado River commencing this year unless the Guidelines are reinstated. Major reasons for the lack of approved QSA Agreements by the deadline included concerns about two early termination provisions contained therein and expected and potential unexpected environmental mitigation costs associated with actions undertaken pursuant to the Agreements.

The first cause for early termination arises from the fact that the Agreements will be executed years before the completion of a Habitat Conservation Plan under federal law and a Natural Community Conservation Plan under State law (collectively, "Environmental Plans"). The funds pledged to implement the Environmental Plans exceed current estimates of the cost of the environmental mitigation, but unknown future costs of environmental mitigation could exceed the financial commitment of the parties to the Agreements. Therefore, the Agreements include an early termination provision if during the term of the QSA actual mitigation costs exceed funds available to meet those costs.

The second cause for early termination involves negotiation of the transfer price. Pursuant to the Agreements, SDCWA is required to pay MWD for exchange of the water supply made available to SDCWA because of IID conservation measures ("Exchange

Fee"). The parties have only negotiated the Exchange Fee for 35 out of 45 years in the term of the Agreements. If the Exchange Fee for the remaining years is above a contractually defined maximum, then the Agreements could terminate in 2037. SDCWA must give notice of its intent to exercise this early termination provision prior to 2017.

When it unanimously approved Assembly Concurrent Resolution No. 251 last fall, the California Legislature recognized the importance of the successful implementation of the Agreements. The Legislature acknowledged that Colorado River water is oversubscribed and that, for many years, California's use has exceeded the state's annual apportionment of 4.4 million acre-feet. The Legislature further recognized that the proposed IID/SDCWA transfer is an integral part of California's plan to reduce its use of Colorado River water. The Legislature found that the potential loss of up to 800,000 acre-feet per year "would have a significant impact on California's economy, environment, and quality of life, and could force a greater reliance on water from the fragile ecosystem of the California Bay-Delta to make up the lost water."

## **B. PURPOSE OF LOAN GUARANTEE**

Early termination would eliminate the contract revenues that IID and its landowners would rely upon to finance the capital investments enhancing water supply based upon IID water conservation. The purpose of the proposed Loan Guarantee is to address these financial risks and enable IID to issue sufficient revenue bonds to finance the water supply project.

## **C. APPLICATION PROCESS**

1. **Preliminary Loan Guarantee Application.** IID shall submit a Preliminary Loan Guarantee Application to the CIEDB at least 35 days before the date that the CIEDB's board of directors ("Board") will consider the adoption of a Preliminary Loan Guarantee Commitment. The Preliminary Loan Guarantee Application must include: an adopted resolution of IID's governing body requesting a Preliminary Loan Guarantee Commitment; a finding acknowledging that the Loan Guarantee will be subject to the Terms and Conditions listed in Section D below; and other information determined necessary by CIEDB's Executive Director.
2. **Preliminary Loan Guarantee Commitment.** If the Board approves a Preliminary Loan Guarantee Application, IID will be provided with a Preliminary Loan Guarantee Commitment. The Preliminary Loan Guarantee Commitment shall expire on December 31, 2003 if the Agreements are not executed by that date. Upon execution of the QSA, the Preliminary Loan Guarantee Commitment shall expire on December 31, 2009, unless extended in writing by the Board.
3. **Loan Guarantee Application.** IID shall submit a Loan Guarantee Application to the CIEDB at least 75 days before the date that the Board will consider the approval of a Loan Guarantee. The Loan Guarantee Application must include the following: (1) substantially final draft Bond documents for the bonds to be guaranteed by the Loan

Guarantee (“Bonds”<sup>1</sup>), including the indenture, official statement and loan agreement; (2) detailed information and documentation demonstrating that IID, the projects to be financed with the Bonds, and the Bonds comply with the Terms and Conditions listed in Section D; (3) other information and documentation deemed necessary by CIEDB’s Executive Director.

4. **Loan Guarantee.** If the Board approves the Loan Guarantee Application, IID will be issued a Loan Guarantee. The Loan Guarantee will be subject to the Terms and Conditions contained in Section D and any other provisions required by the Board.

#### **D. TERMS AND CONDITIONS OF LOAN GUARANTEE**

Any Loan Guarantee will be subject to the following terms and conditions:

1. **Eligible Borrower.** IID must provide documentation that it meets the definition of “Sponsor” contained in Government Code Section 63010(u). The Bonds to be guaranteed may be issued by IID or another conduit issuer on behalf of IID.
2. **Eligible Project.** The projects to be financed with Bond proceeds (“Project”) must be consistent with the definition of “Public Development Facilities” contained in Government Code Sections 63010(p). Additionally, the Project must be for the purpose of IID meeting its contractual obligations under the Agreements.
3. **Eligible Costs.** The costs of the Project must be consistent with the definition of “Cost” contained in Government Code Section 63010(f).
4. **Amount.** The amount of any individual Loan Guarantee shall be approved by adopted resolution of the Board. The maximum amount of all Loan Guarantees must not exceed an amount contained in the Guarantee Trust Account (see #12) and allowed by the Reserve Account Requirement (see #13).
5. **Credit Rating Requirement.** Prior to the execution of a Loan Guarantee, IID must provide a letter from either Moody’s Investor’s Service, Standard & Poor’s Ratings Service, or Fitch Ratings that the Bonds would be rated at least Baa1/BBB+/BBB+, respectively, if the early termination risk did not exist.
6. **Debt Service Reserve Fund.** Any Bonds must have a debt service reserve fund funded at the maximum amount authorized under the Internal Revenue Code for tax-exempt debt.
7. **Amortization Pattern of Bonds.** Any Bonds must be structured with level debt service unless the Board approves specific exceptions as part of the Loan Guarantee.
8. **Term of Bonds.** The term of any Bonds shall not exceed 30 years.

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<sup>1</sup> Defined in Government Code section 63010 (e).

9. **Fixed Rate.** The interest rate on any Bonds must be a fixed rate.
10. **IID Resolution.** IID's Loan Guarantee Application must contain a certified copy of the adopted resolution required by Government Code Section 63041(a).
11. **Prevailing Wages.** The Project must comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, including the payment of prevailing wages.
12. **Funding of Guarantee Trust Account.** Upon approval of the Criteria, Priorities and Guidelines, the CIEDB will commit \$20 million from the California Infrastructure and Economic Development Bank Fund to the California Infrastructure Guarantee Trust Fund ("Guarantee Trust Fund"), which is established pursuant to Government Code section 63060. Upon approval of a Preliminary Loan Guarantee Commitment, the CIEDB will commit the \$20 million to a sub account within the Guarantee Trust Fund named the Imperial Irrigation District Infrastructure Guarantee Trust Account ("IID Guarantee Trust Account"). As long as either the Preliminary Loan Guarantee Commitment or the Loan Guarantee is in effect, funds in the IID Guarantee Trust Account shall be unconditionally pledged as described in those documents. Interest earnings on the IID Guarantee Trust Account shall remain within the IID Guarantee Trust Account, subject to the above-described pledge.
13. **Reserve Account Requirement.** If the CIEDB determines that the amount in the IID Guarantee Trust Account is below any Reserve Account Requirement established pursuant to Government Code section 63064, the CIEDB shall follow the procedures contained therein. Currently, those procedures are as follows:
  - (1) If the CIEDB determines that the amount in the IID Guarantee Trust Account is below the Reserve Account Requirement, the Executive Director shall

15. **Fees.** Simultaneous with the execution of a Preliminary Loan Guarantee Commitment or Loan Guarantee, the IID must reimburse the CIEDB for all out-of-pocket legal and financial advisory fees and internal staff costs incurred in connection with the issuance of the Preliminary Loan Guarantee Commitment or Loan Guarantee. The CIEDB will also charge an annual monitoring fee in an amount to be authorized by the Board at the time the Loan Guarantee is approved.